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10/069,001	02/20/2002	Yuji Sawada	0992-0127P	4536
2292 7590 02/12/2007 BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747			EXAMINER ALEJANDRO, RAYMOND	
			ART UNIT	PAPER NUMBER
			1745	
SHORTENED STATUTORY PERIOD OF RESPONSE		NOTIFICATION DATE	DELIVERY MODE	
3 MONTHS		02/12/2007	ELECTRONIC	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

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mailroom@bskb.com

Office Action Summary

Application No.

10/069,001

Applicant(s)

SAWADA ET AL.

Examiner

Raymond Alejandro

Art Unit

1745

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 January 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 5, 8, 9, 14, 16, 25, 26 and 30-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 5, 8-9, 14, 16, 25-26, 30-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

Please find included herein a response to the amendment filed by the applicant on 01/12/07. The rejections under Section 112 and 102 have been overcome. Refer to the above-mentioned amendment for more details about applicant's rebuttal arguments and remarks. However, the rejections under Section 103 still stand as seen below. Thus, the present application is being finally rejected for the reasons of record.

Claim Disposition

1. Claim 27 has been cancelled.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later

Art Unit: 1745

invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 1, 5, 8-9, 14, 16, 25-26 and 30-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Daio et al 5156930 in view of WO 97/21779 (*International Publication of PCT/JP96/03576 and for which Araki et al US 2003/0194564 represents an English version thereof*) (heretofore Araki et al).

As to claims 1, 14, 16 and 30-31:

Daio et al disclose a three layer construction comprising a metallic thin plate, a non-adhesion type resin film and a heat-adhesion type resin film used as an opening sealing device for a battery (TITLE/ABSTRACT/COL 1, lines 5-10 and 45-50). **FIGURE 8** illustrates the specific 3-layer construction (FIGURE 8/ COL 3, lines 1-7 and lines 61-67). The heat adhesion type polyolefin resin is made of a polyethylene and polypropylene and is modified by a carboxyl group (COL 6, lines 30-38 and 60-67/CLAIMS 2-4). The metallic thin plate is made of aluminum (COL 6, lines 60-62). *The specific adhesive strength is an inherent characteristic of the adhesive film. The sealing device of Daio et al serves the intended use of enclosing, sealing or protecting battery components such as electrode and/or electrolyte.*

1st Examiner's note: *as to the specific preamble reciting "a laminate for sealing an electrolyte or protecting an electrode of a battery", it is pointed out that the preamble still refers to intended use. That is, the claim is directed to a laminate structure per se and the foregoing preamble phrase is only a statement of ultimate intended utility.*

As to claim 5:

The metallic thin plate is made of aluminum (COL 6, lines 60-62).

Art Unit: 1745

As to claims 8-9:

The heat adhesion type polyolefin resin is made of a maleic anhydride polyethylene in which polyethylene is graft-polymerized with maleic acid (COL 6, lines 60-67). It is made such that unsaturated carboxylic acid having carboxyl group such as an acid is added to a non-polar resin such as polyethylene and polypropylene and copolymerization or graft-polymerization is performed therefor (COL 6, lines 30-38/CLAIMS 2-4).

Daio et al describe a laminated structure as discussed above. However, the preceding prior art reference fails to expressly disclose the specific inert protective layer and acid/oxidative treatment.

As to claims 1 and 25-26:

Araki et al disclose a laminated article (TITLE) formed by laminating a polymeric material (*the layer of an adhesive resin*) onto a substrate (*the metal layer*) (P0182). The polymeric resin is adhesive (ABSTRACT/P0056-0059, 0001, 0018, 0020, 0036-0037) The substrate is a metal such as aluminum (P0187-0190). Araki et al disclose that in order to further enhance adhesive property, metal surfaces may be subjected to chemical conversion treatment with acids (P0193), in particular, a substrate material on which an oxide film is formed by chemical conversion treatment with chromic or phosphoric acid (P0206). **Figures 4-13** illustrate multiple laminated articles. Of particular interest is the Araki et al's teaching that the polymeric resin may have a functional group such as carboxyl (P0077). **Preparation Example 5** exemplifies the use of carboxyl as functional group of the polymeric material. Thermo-compression bonding is disclosed (P0144). *Thus, Araki et al specifically name a carboxyl group. The specific adhesive strength is an inherent characteristic of the adhesive film. Since the*

Art Unit: 1745

substrate material is subjected to an acidic treatment, the resulting film formed thereon is in direct contact with the adhesive film.

In view of the above, it would have been obvious to a person possessing a level of ordinary skill in the pertinent art at the time the invention was made to make or use the specific inert protective layer and oxidative treatment of Araki et al to process the aluminum foil (layer) of Daio et al as Araki et al disclose that in order to further enhance adhesive property, metal surfaces may be subjected to chemical conversion treatment with acids (P0193), in particular, a substrate material on which an oxide film is formed by chemical conversion treatment with chromic or phosphoric acid (P0206). Thus, Araki et al disclose how suitable is to subject metallic layers/foils to acidic treatment to form inert protective layers to enhance adhesive properties. Both references are pertinent to one another as they both confront the same technical problem of improving seal-ability, adhesiveness and mechanical integrity of laminated structures.

5. Claims 1, 5, 8-9, 14, 16, 25-26 and 30-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over the European publication EP 0895296 (heretofore 'the EP'296') in view of WO 97/21779 (*International Publication of PCT/JP96/03576 and for which Araki et al US 2003/0194564 represents an English version thereof*) (heretofore Araki et al).

As to claims 1, 14, 16 and 30-31:

The EP'296 discloses a sheet-like sealed electrolyte cell having a casing made of a laminated material composed of a metal foil and a resin film (ABSTRACT/P0026). The laminated material comprises a metal foil laminated to a resin film and is fused by heat or bonded by thermal fusion (P0003,0006, 0011). The structure of the laminated material is

Art Unit: 1745

provided with a metal layer made from Al, first polypropylene layers 1b and an adhesive layer 1d and a carboxylic acid-denatured polypropylene layer 1e in which a carboxylic group is added to propylene (P0028-0029). **Figure 5** illustrates the Al-layer 1a, the polypropylene layers 1b, 1c; the carboxylic-acid denatured polypropylene layer 1e and the dry-laminated adhesive layer 1d (FIGURE 5). *The specific adhesive strength is an inherent characteristic of the adhesive film. The casing of the EP'296 serves the intended use of enclosing, sealing or protecting battery components such as electrode and/or electrolyte.*

1st Examiner's note: as to the specific preamble reciting "a laminate for sealing an electrolyte or protecting an electrode of a battery", it is pointed out that the preamble still refers to intended use. That is, the claim is directed to a laminate structure per se and the foregoing preamble phrase is only a statement of ultimate intended utility.

As to claim 5:

The metal layer 1a is made from Al (P0028).

As to claims 8-9:

The EP'296 discloses carboxylic acid-denatured polypropylene layer 1e in which a carboxylic group is added to propylene, and graft-polymerization (P0028-0029).

The EP'296 describes a laminated structure as discussed above. However, the preceding prior art reference fails to expressly disclose the specific inert protective layer and acid/oxidative treatment.

As to claims 1 and 25-26:

Araki et al disclose a laminated article (TITLE) formed by laminating a polymeric material (*the layer of an adhesive resin*) onto a substrate (*the metal layer*) (P0182). The

Art Unit: 1745

polymeric resin is adhesive (ABSTRACT/P0056-0059, 0001, 0018, 0020, 0036-0037) The substrate is a metal such as aluminum (P0187-0190). Araki et al disclose that in order to further enhance adhesive property, metal surfaces may be subjected to chemical conversion treatment with acids (P0193), in particular, a substrate material on which an oxide film is formed by chemical conversion treatment with chromic or phosphoric acid (P0206). **Figures 4-13** illustrate multiple laminated articles. Of particular interest is the Araki et al's teaching that the polymeric resin may have a functional group such as carboxyl (P0077). **Preparation Example 5** exemplifies the use of carboxyl as functional group of the polymeric material. Thermo-compression bonding is disclosed (P0144). *Thus, Araki et al specifically name a carboxyl group. The specific adhesive strength is an inherent characteristic of the adhesive film. Since the substrate material is subjected to an acidic treatment, the resulting film formed thereon is in direct contact with the adhesive film.*

In view of the above, it would have been obvious to a person possessing a level of ordinary skill in the pertinent art at the time the invention was made to make or use the specific inert protective layer and oxidative treatment of Araki et al to process the aluminum foil (layer) of the EP'296 as Araki et al disclose that in order to further enhance adhesive property, metal surfaces may be subjected to chemical conversion treatment with acids (P0193), in particular, a substrate material on which an oxide film is formed by chemical conversion treatment with chromic or phosphoric acid (P0206). Thus, Araki et al disclose how suitable is to subject metallic layers/foils to acidic treatment to form inert protective layers to enhance adhesive properties. Both references are pertinent to one another as they both confront the same technical problem of improving seal-ability, adhesiveness and mechanical integrity of laminated structures.

Art Unit: 1745

6. Claims 1, 5, 8-9, 14, 16 and 25-26 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Japanese document JP 11-086808 (herein called "*the JP'808 document*") in view WO 97/21779 (*International Publication of PCT/JP96/03576 and for which Araki et al US 2003/0194564 represents an English version thereof*) (heretofore Araki et al).

The present application is directed to a laminate for sealing a battery electrolyte or electrode wherein the disclosed inventive concept comprises the specific laminate structure.

With reference to claims 1, 14 and 16:

The JP'808 document discloses a sealing bag for nonaqueous electrolyte battery, the sealing bag seals the positive and negative electrodes and the electrolyte (Title/Abstract). *Thus, the layered sealing bag meets the requirement of being a seal film for sealing a battery component such as an electrolyte or an electrode.*

1st Examiner's note: *as to the specific preamble reciting "for use as a seal film for sealing an electrolyte of a battery or as a protective film for protecting an electrode of a battery", it is pointed out that the preamble refers to intended use. That is, the claim is directed to a laminate per se and the foregoing preamble phrase is only a statement of ultimate intended utility.*

2nd Examiner's note: *the limitations: a) "formed by oxidative or acid treatment of said metal layer" and b) "thermally bonded" are being construed as **product-by-process limitation** and therefore, it is contended that the product itself does not depend on the process of making it. Accordingly, in a product-by-process claim, the patentability of a product does not depend on its method of production. (**emphasis added** →) Having shown that the prior art of record comprises the same laminate structure (i.e. the metal layer, the surface treated layer, and the polyolefin*

Art Unit: 1745

layer in the same structural arrangement), it is further noted that the product in the instant claims is the same as or obvious over the product of the prior art.

It is disclosed that the sealing bag is formed with a material stuck together with plastic layers inserted with a metal layer such as aluminum foil and a metal deposition layer, a PET film is stuck thereto and a thermoplastic resin such as polyethylene is also stuck thereto (Abstract/Solution). **Figure 3** below illustrates the specific layered structure of the sealing feature, particularly, the Al foil 9, the plastic layers 11 and the heat seal layers 10.

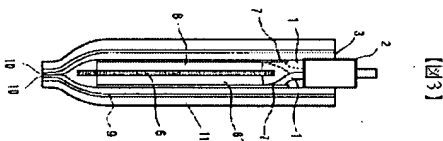


TABLE 1 below shows the specific constitution of sealing bag including: the PET layer, an urethane adhesive, the Al foil, the acid-modified LDPE, and the heat seal layers Y and Z.

【表 1】

封入物のシート構成	
PET	(12 μm)
ウレタン系接着剤	(5 μm)
アルミ箔	(9 μm)
酸変成LDPE	(20 μm)
ヒートシール層Y	(30 μm)
ヒートシール層Z	(30 μm)

With respect to the surface treated layer: the JP'808 document also discloses that the sealing bag 3 preferably comprises a laminated material comprising a substrate having a metallic vapor deposition layer sandwiched between plastic layers 10 and 11 (SECTIONS 0010-0015). Thus, the substrate itself having the metallic vapor deposition layer acts as the surface-treated layer over the substrate surface. Furthermore, it is also disclosed that the plastic film 11 and the metallic foil layer 9 are adhered to each other by using adhesive, such as urethane, epoxy and polyester resins (SECTIONS 0010-0015). Hence, the foregoing adhesive layer, to some extent, chemically treat the surface of the Al foil or the metallic layer.

Art Unit: 1745

With respect to the layer of an adhesive resin: it is disclosed that the acid-modified LDPE is an acid-modified polyolefin being modified by a carboxylic acid (SECTIONS 0010-0015).

As to claim 5:

The JP'808 document discloses the metal layer is made of aluminum foil (ABSTRACT/SOLUTION).

On the matter of claims 8-9:

It is disclosed that resin composition used for a plastic layer is mainly made of acid-denatured polyethylene or acid-denatured polypropylene (ABSTRACT/SOLUTION). It is disclosed that the acid-modified LDPE is an acid-modified polyolefin being modified by a carboxylic acid (SECTIONS 0010-0015).

The JP'808 document discloses a layered laminate made of a seal film according to the foregoing aspects. However, the JP'808 does not expressly disclose the specific the specific inert protective layer and acid/oxidative treatment.

As to claims 1 and 25-26:

Araki et al disclose a laminated article (TITLE) formed by laminating a polymeric material (*the layer of an adhesive resin*) onto a substrate (*the metal layer*) (P0182). The polymeric resin is adhesive (ABSTRACT/P0056-0059, 0001, 0018, 0020, 0036-0037) The substrate is a metal such as aluminum (P0187-0190). Araki et al disclose that in order to further enhance adhesive property, metal surfaces may be subjected to chemical conversion treatment with acids (P0193), in particular, a substrate material on which an oxide film is formed by chemical conversion treatment with chromic or phosphoric acid (P0206). **Figures 4-13** illustrate

Art Unit: 1745

multiple laminated articles. Of particular interest is the Araki et al's teaching that the polymeric resin may have a functional group such as carboxyl (P0077). **Preparation Example 5** exemplifies the use of carboxyl as functional group of the polymeric material. Thermo-compression bonding is disclosed (P0144). *Thus, Araki et al specifically name a carboxyl group. The specific adhesive strength is an inherent characteristic of the adhesive film. Since the substrate material is subjected to an acidic treatment, the resulting film formed thereon is in direct contact with the adhesive film.*

In view of the above, it would have been obvious to a person possessing a level of ordinary skill in the pertinent art at the time the invention was made to make or use the specific inert protective layer and oxidative treatment of Araki et al to process the aluminum foil (layer) of the JP'808 as Araki et al disclose that in order to further enhance adhesive property, metal surfaces may be subjected to chemical conversion treatment with acids (P0193), in particular, a substrate material on which an oxide film is formed by chemical conversion treatment with chromic or phosphoric acid (P0206). Thus, Araki et al disclose how suitable is to subject metallic layers/foils to acidic treatment to form inert protective layers to enhance adhesive properties. Both references are pertinent to one another as they both confront the same technical problem of improving seal-ability, adhesiveness and mechanical integrity of laminated structures.

Response to Arguments

7. Applicant's arguments filed 01/12/07 with respect to the rejection under Section 102 have been fully considered and are persuasive. Thus, the rejection has been withdrawn.

Art Unit: 1745

8. Applicant's arguments filed 01/12/07 with respect to the rejections under Section 103 have been fully considered but they are not persuasive.

9. In the first place, applicant's argument concerning the validity of the Araki et al is well taken. In a simplified aspect, the examiner cited Araki et al US 2003/0194564 under Section 102 as a prior art but the ultimate goal was to establish a proper prima facie case of anticipation/obviousness based upon the teachings PCT/JP96/03576 for which an international publication published on 06/19/97 as publication WO 97/21779. The document WO 97/21779 represents an International Publication of PCT/JP96/03576 and for which Araki et al US 2003/0194564 further represents an English version thereof. Notice that for purpose of art application, the effective publication date of WO 97/21779 is, by far, much more earlier than the publication date of Araki et al US 2003/0194564. Thus, the document WO 97/21779 is prior art against applicant's invention. All in all, to avoid any further confusion, the examiner is citing herein WO 97/21779 in respective prior art rejections, and all grounds of rejection now rely upon the foregoing document instead of Araki et al US 2003/0194564. Even though the examiner recognizes that the simplified application of PCT/JP96/03576-WO 97/21779 was confusing, the examiner states herein that the Examiner's intention was to present prior art rejections rather than causing or creating any confusion, misunderstanding or disorientation. Now included in the above rejections is an expanded version of the applicability of PCT/JP96/03576-WO 97/21779 and Araki et al US 2003/0194564. The examiner expects this action clarifies applicant's concern.

10. Applicant has challenged the remaining grounds of rejection under Section 103 by stating that *"there is no motivation for combining the teachings of Daio et al or the EP'296 or the JP'808 and Araki et al for a person skilled in the art to find the present invention obvious"*,

Art Unit: 1745

particularly because “*the description in Araki et al mentions many uses, however, none of the potential uses include: a “valve means” for a battery (Daio et al), or a seal of the non-aqueous electrolyte cell (the EP’296), or a sealing bag for non-aqueous electrolyte battery (the JP’808)*”.

Applicant has further discussed a specific case law (i.e. *In re Jones* 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992)) to support why there is no suggestion to combine these references.

11. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. (*Emphasis added*→) Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). Concerning this matter, it is noted that all three primary references are particularly concerned with the same technical difficulty confronted by the applicant. Each of the primary references discusses at large layered structures aimed at providing or enhancing sealing characteristics of their respective batteries.

For instance, Daio et al disclose a three layer construction comprising a metallic thin plate, a non-adhesion type resin film and a heat-adhesion type resin film used as an opening

Art Unit: 1745

sealing device for a battery (TITLE/ABSTRACT/COL 1, lines 5-10 and 45-50); the EP'296 discloses a sheet-like sealed electrolyte cell having a casing made of a laminated material composed of a metal foil and a resin film (ABSTRACT/P0026). The laminated material comprises a metal foil laminated to a resin film and is fused by heat or bonded by thermal fusion (P0003,0006, 0011); and the JP'808 document discloses a sealing bag for nonaqueous electrolyte battery wherein the sealing bag seals the positive and negative electrodes and the electrolyte (Title/Abstract). In their respective inventive contexts, all of the primary references are pertinent to applicant's invention which merely broadly claims "*a laminate for sealing an electrolyte or protecting an electrode of a battery*". Note that applicant's invention lack sufficient structural description to ascertain the specifics of how the laminate seals, or where the laminate seals or what (specific contact zones) the laminate seals other than an electrolyte or an electrode. Thus, it can be fairly said that Daio et al's three layer construction associated with a valve or the EP'296 sealing casing and/or the JP'808 sealing bag meet the claimed requirement of providing a laminated sealing structure for sealing battery components such as an electrolyte or electrode irrespective of its (their) specific location within their respective batteries. However, the primary references disclose all the claimed features except for the specific inert protective layer and acid treatment. Thus, the only deficiency of these primary references is the lack of the specific inert protective layer and acid treatment. To make up for such a deficiency the Araki et al is cited because it unequivocally discloses such specific inert protective layer and acid treatment, in particular, in a laminated article consisting essentially of the same claimed layered structure. Thus, the Araki et al reference could not be more pertinent than what actually it is. The Araki et al reference teaches the same structure and the specific inert protective layer/acid treatment. The

Art Unit: 1745

only missing statement that the Araki et al reference fails to teach is one statement of ultimate intended utility, that is to say, that its laminated structure is for sealing a battery component. The examiner could not agree more with applicant when applicant states “*that the Araki et al reference mentions many uses*”. That “many uses” statement by the Araki et al reference is what substantiates the prima-facie case of obviousness as set forth above. Although the Araki et al reference fails to expressly disclose the specific intended use of its invention for sealing battery components, given that the same Araki et al reference discusses and mentions so many uses, it can be appropriately said that the Araki et al reference was not intended to address any particular or specific technology or field of endeavor. In this context, the Araki et al reference opens the door to use its teachings in a plethora of fields of endeavor or technical fields such as battery sealing. This is what substantiates the prima facie case of obviousness. In other words, if the Araki et al reference were dedicated to one-single technology or field of endeavor, perhaps, the examiner then would side with applicant but certainly this is not the case here. More than enough said.

12. In response to any applicant's argument intending to establish nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). Araki et al disclose how suitable is to subject metallic layers/foils to acidic treatment to form inert protective layers to enhance adhesive properties. The references are pertinent to one another as they both confront the same technical problem of improving seal-ability, adhesiveness and mechanical integrity of laminated

Art Unit: 1745

structures. In this case, the teachings of the Araki et al reference are fully pertinent to respective primary references and applicant's field of endeavor because the Araki et al reference conceptualizes the use of specific protective layers on laminated structure for many intended uses. Therefore, there is no evidence to suggest or substantiate that the multi-applicability of Araki et al's teaching is not suitable for sealing battery components. Burden is thus shifted to the applicant to come forward with objective evidence to demonstrate the opposite.

13. In response to applicant's argument that the Araki et al reference mentions many uses, however, none of the potential uses include the specifics of the primary references, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

14. With respect to the case law, the examiner makes no comment about the validity thereof but only argues that the specifics of the case law does not seem to apply to the claimed subject matter. The case law does not relate to laminated structures nor does it encompass same actual materials.

Conclusion

15. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO**

Art Unit: 1745


MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raymond Alejandro whose telephone number is (571) 272-1282. The examiner can normally be reached on Monday-Thursday (8:00 am - 6:30 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick J. Ryan can be reached on (571) 272-1292. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Raymond Alejandro
Primary Examiner
Art Unit 1745



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